There will be judgment for the Plaintiffs against the 2nd and 7th Defendants for 75% of the damages previously agreed by the parties with interest at 6% per annum from date of service of the Writ and costs. I also order half costs to be paid to the Plaintiffs in respect of their claims against 1st, 3rd, 4th, 5th and 6th Defendants which I have dismissed.

Order accordingly.

UNITED MALAYAN BANKING CORPN. BHD. v. SOO LEAN TOOI & ORS.

[O.C.J. (Yusof Abdul Rashid J.) February 6, 1982]

[Johore Bahru – Originating Summons No. 38 of 1981]

Jurisdiction – Reciprocal enforcement of judgment – Reciprocal Enforcement of Judgments Act 1958 (Act 99), ss. 4 & 5(1)(a)(ii) & (iii) – Courts of Judicature Act 1964 (Act 91), s. 23(1)(b) – Singapore Supreme Court of Judicature Act 1969, s. 16(1)

Practice & Procedure – Reciprocal enforcement of judgment – Reciprocal Enforcement of Judgments Act 1958, (Act 99), ss. 4 & 5(1)(a)(ii) & (iii) – Courts of Judicature Act 1964 (Act 91), s. 23(1)(b) – Singapore Supreme Court of Judicature Act 1969, s. 16(1)

The plaintiffs on July 8, 1977, obtained a judgment from the High Court of Singapore (the original court) whereby it was adjudged, *inter alia,* that the plaintiffs do recover against the second defendant (the respondent in the present proceedings) and 2 others, the sum of $20,645.22 with interest. The plaintiffs then applied under section 4 of the Reciprocal Enforcement of Judgements Act, 1958 (Act 99) to have the judgment against the respondent registered in Johore Bahru but only in respect of $11,460.38 with interest. On registration thereof being granted, the respondent applied for the setting aside of the said registration.

Held: (1) it is the intention of the Legislature to confer jurisdiction in the High Court of Malaysia under section 23(1)(b) of Act 91 on a person who does not reside or has no place of business or has no property within the local jurisdiction of the said High Court if such person is one of several defendants who have been sued where the other defendants are residing or have a place of business or have property within the local jurisdiction of the said High Court;

(2) since the provisions of section 23(1)(b) of the Act 91 are *in pari materia* with the provisions of section 16(1)(b) of the Singapore Act, the latter provisions should admit the same construction;

(3) the original court had jurisdiction to award judgment against the respondent by virtue of section 16(1)(b) and as such the respondent's application to have the registration of the judgment of the original court to be set aside should be dismissed with costs.

Cases referred to:

(1) *Tunku Abaidah* v. *Tan Boon Hoe* [1935] M.L.J. 214.

(2) *Murugappa Chettiar* v. *Krishnappa Chettiar* [1940] M.L.J. 200.

(3) *Anthinarayana Mudaliar* v. *Ajit Singh* [1953] M.L.J. 229.

ORIGINATING SUMMONS.

Ho Thian Cheh for the plaintiffs.

Chelliah Paramjothy for the defendants.

Cur. Adv. Vult.

Yusof Abdul Rashid J.: The plaintiffs, on July 8, 1977, obtained a judgment from the High Court of Singapore ("the original court") whereby it was adjudged, *inter alia,* that the plaintiffs do recover against the second defendant (the respondent in the instant proceedings) and two others, the sum of $20,645.22 together with the interest at the rate of 15% per annum with monthly rests from August 26, 1974 until judgment and thereafter at the rate of 8% per annum from the date of judgment until realisation and $458.59 by way of costs. The plaintiffs then applied under section 4 of the Reciprocal Enforcement of Judgment Act, 1958 ("Act 99") to have the judgment against the respondent registered in Johore Bahru but only in respect of a sum of $11,460.38 with interest at the rate of 8% per annum from July 1, 1980 until realisation and for $461.62 as costs. On the registration thereof being granted, the respondent applied for the setting aside of the said registration.

In the supporting affidavit, the respondent admitted that he was the second defendant in the Civil Suit No. 3329 of 1974 of the original court and that judgment was entered against him as alleged by the plaintiffs. However, the respondent contended that in purporting to give judgment against him the original court had acted without jurisdiction on the grounds that at all material times –

a) the respondent was not carrying on business nor was he ordinarily resident within the jurisdiction of the original court;

b) he was not served with the proceedings and did not voluntarily appear or otherwise submit or agree to the jurisdiction of the said original court in which the judgment was given against him;

c) in the event that an adverse finding was made against him, such judgment could not be enforced or executed upon against him in the Republic of Singapore because he does not possess any property within Singapore;

In answer, the plaintiffs' solicitors, who were authorised by the plaintiffs to make the affidavit on their behalf, deposed that in the Civil Suit No. 3329 of 1974 of the original court, the plaintiffs claimed for the recovery from

1. Soo Lean Tooi;
2. Ng Kim Pong (the respondent in the instant case); and
3. Ng Quee Teng

the sum of $20,438.77 with 15% per annum interest with monthly rests which were due from Chop Swee Choon, the payment whereof had been jointly and severally guaranteed by the said persons. Except for the respondent the other two guarantors were residents of Singapore. It was further submitted that the original court was vested with jurisdiction over the respondent by virtue of section 16(1)(b) of the Supreme Court of Judicature Act, 1969 of Singapore ("the Singapore Act"). Section 16(1) of the Singapore Act provides –

"16(1) The High Court shall have jurisdiction to try all civil proceedings where –

(a) The cause of action arose in Singapore;

(b) The defendant or *one of several defendants* resides or has his place of business or his property in Singapore;

(c) The facts on which the proceedings are based exists or are alleged to have occurred in Singapore; or

(d) Any land the ownership of which is disputed is situated within Singapore."

Since it was never disputed that the first and third defendants in the Civil Suit No. 3329 of 1974 of the original court were residents of Singapore and that only the second defendant therein (the respondent in the instant case) was residing outside the jurisdiction of Singapore, the original court was conferred jurisdiction to try the proceedings. The plaintiffs were granted leave to serve the writ of summons out of jurisdiction on the respondent. Contrary to the contention of the respondent it was established that the writ of summons was served on the respondent by the process server of the Johore Bahru Court on February 1, 1975. In the result the original court had jurisdiction over the respondent.

In his application to have the registration of the judgment set aside, the respondent relied on the grounds set out under section 5(1)(a)(ii) and (iii) of Act 99. I will first dispose of the ground under section 5(1)(a)(iii) of Act 99 which provides –

"(iii) That the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of these proceedings in sufficient time to enable him to defend the proceedings and did not appear;"

It was however disclosed that the original court granted leave to have the writ of summons served out of its jurisdiction on the respondent and that the said writ of summons was duly served on February 1, 1975. On the respondent failing to enter appearance, a judgment in default was awarded by the original court on July 8, 1977. In the circumstances I was not satisfied that the respondent "did not receive notice of these proceedings in sufficient time to enable him to defend the proceedings". This ground fails.

As regards the ground set out under section 5(1)(a)(ii) of Act 99, the respondent contended that the presumption under section 5(2) of the Act 99 did not arise since he was not any of the persons set out under any of the sub-paragraphs under section 5(2)(a) of Act 99. In my view, if the respondent was not one of those persons specified under section 5(2)(a) of Act 99, it did not necessarily mean that the original court had no jurisdiction on the respondent. To put it differently, it was not correct to allege that unless the plaintiffs could establish that the respondent was one of those persons mentioned under section 5(2)(a) of Act 99, the plaintiffs had failed to prove that the original court had jurisdiction over the respondent. To my mind, if the respondent was one of those persons, then the original court was deemed to have jurisdiction without any need for the plaintiffs to adduce any evidence to prove that the original court indeed had such jurisdiction.

The provisions of section 5(2)(a) of Act 99 create but rebuttable presumptions in relation to laws purported to be in force in the country of the original court, the existence of which required no formal proof. However, where proof is available regarding relevant laws relating to the jurisdiction of the original court, the presumptions need not be relied on in order to establish that in fact that original court had jurisdiction to

try the original proceedings. It follows that where the plaintiffs fail to raise any of the rebuttable presumptions under the said section 5(2)(a) of Act 99 or otherwise that the respondent has successfully rebutted those presumptions, it does not necessarily mean that the original court, in the circumstances, had no jurisdiction over the respondent.

In the instant case the plaintiffs were not relying on any of those facts enumerated under section 5(2)(a) of Act 99 to prove that the original court had jurisdiction over the respondent. To establish that the original court indeed had jurisdiction over the respondent, the counsel for the plaintiffs cited section 16(1)(b) of the Singapore Act and that of the three defendants in Civil Suit No. 3329 of 1974 of the original court, two of them were residents of Singapore. Hence, the original court was conferred jurisdiction over the respondent by virtue of the said section 16(1)(b) of the Singapore Act. In the circumstances, the respondent would only succeed in setting aside the registration of the judgment of the original court if only he could bring himself under one of the circumstances as set out under section 5(3) of Act 99. In the instant case, the respondent did not raise nor did he prove that he came under any of these circumstances as set out under section 5(3) of Act 99.

It is noted that the High Court of Malaysia is vested with similar jurisdiction under section 23(1)(b) of the Courts of Judicature Act 1964 ("Act 91") the provisions of which are –

"23(1) Subject to the limitation contained in Article 128 of the Constitution every High Court shall have jurisdiction to try all civil proceedings where –

(a) .....

(b) the defendant or one of several defendants resides or has his place of business, or

(c) .....

(d) .....

within local jurisdiction of the court ..."

Had the situation of the instant case been the reverse e.g. had the original court been the High Court in Malaysia and had the respondent been the resident of Singapore whilst the two other defendants were residents of Malaysia, the High Court of Malaysia would then have jurisdiction to deal with the proceedings, had the proceedings been instituted in one of the States of Malaysia. In the circumstances it would have been lawful for the plaintiffs to apply for leave to have the writ of summons served on the respondent out of jurisdiction. Then, the Singapore High Court would have recognised the judgment of the High Court of Malaysia against the respondent.

In my opinion it is the intention of the Legislature to confer jurisdiction in the High Court of Malaysia under section 23(1)(b) of Act 91 on a person who does not reside or has no place of business or has no property within the local jurisdiction of the said High Court if such person is one of several defendants who have sued where the other defendants are residing or have a place of business or have property within the local jurisdiction of the said High Court. Section 23(1)(b) of Act 91 would not have been worded so, had the intention of the Legislature been different. Should the words "one of several defendants" been omitted, then the High Court would not have jurisdiction on a person who is one of several defendants and who does not reside within the local jurisdiction thereof even if the other defendants are residing therein. Since the provisions of section 23(1)(b) of Act 91 are *in pari materia* with the provisions of section 16(1)(b) of the Singapore Act, the latter provisions should admit the same construction.

The learned counsel for the respondent had referred to several cases reported in the *Malayan Law Journal* and they are –

i) *Tunku Abaidah* v. *Tan Boon Hoe*[1]

ii) *Murugappa Chettiar* v. *Krishnappa Chettiar*[2]

iii) *Anthinarayana Mudaliar* v. *Ajit Singh*[3]

But, with respect, in my view none of those are of any assistance to me and I refrain from expressing my view on the said decisions.

In my judgment the original court had jurisdiction to award judgment against the respondent in its Civil Suit No. 3329 of 1974 and as such the respondent's application to have the registration of the judgment of the original court to be set aside had to be dismissed with costs.

Order accordingly.

Solicitors: *Ho Thian Cheh & Co.; Wong & Paramjothy.*